

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

**FAIR ISAAC CORPORATION, a
Delaware corporation,**

Plaintiff,

v.

**FEDERAL INSURANCE COMPANY, an
Indiana corporation, and ACE
AMERICAN INSURANCE COMPANY,
a Pennsylvania corporation,**

Defendants.

Case No. 16-cv-1054

Expert Report of
Steven R. Kursh, Ph.D., CSDP, CLP
Software Analysis Group
May 17, 2019

Steven R. Kursh, Ph.D., CSDP, CLP

CONFIDENTIAL – ATTORNEYS' EYES ONLY

EXHIBIT
12

A. FICO Asserting the License Agreement Did Not Allow Uses the Parties Agreed to in 2006

70. In its 2016 negotiations with Federal, FICO took the position that it recently discovered uses that breached the License Agreement.¹⁸ FICO then attempted to leverage that alleged breach in its negotiations with Federal.¹⁹

71. FICO's position was not commercially reasonable based on my experience in the industry. First, the License Agreement does not limit use or installation to the United States.²⁰ Rather, it is an enterprise-wide license, without any applicable limitations. Second, FICO's statements and conduct throughout the license relationship shows that FICO believed and treated the License Agreement as allowing enterprise-wide use and installation that was not limited to the United States.²¹

72. FICO's conduct during the negotiations is inconsistent with the License Agreement's terms, as negotiated and agreed to by the parties. Specifically, the Agreement, Section 2 License Grant does not include any language about Federal's use or installation being limited to a specific geographic area.

¹⁸ Deposition of William Waid, January 16, 2019, Exhibit 235.

¹⁹ In fact, there are several examples in evidence that indicate that FICO was well aware of Federal's use indicating that the language of "recently discovered" was false and, thus, provides another example of commercially unreasonable conduct by FICO and its representatives. See, for example, Deposition of Oliver Clark, September 11, 2018, Exhibit 47.

²⁰ Deposition of Chris Ivey, March 14, 2019, Exhibit 60. In my opinion, installation and use are the same with respect to Blaze. One cannot use the Blaze software without installing it. This is consistent with Mr. Carretta's deposition testimony. Deposition of Thomas Carretta, October 9, 2018, p. 103. Therefore, when I refer to "use" in this report I am referring generally to both use and installation.

²¹ E.g., Deposition of Chris Ivey, March 14, 2019, Exhibit 54 (FICO discussing Federal being licensed to use Blaze in Europe); Deposition of Chris Ivey, March 14, 2019, Exhibit 60 (FICO stating Blaze can be used in the United Kingdom); Deposition of Oliver Clark, September 11, 2018, Exhibit 47 (FICO "client partner" stating that Federal has a "global" enterprise license agreement).